

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4702 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RATILAL SHANKERBHAI & ORS.

Versus

PATEL ISHVARBHAI MOTIBHAI

Appearance:

MR AJ PATEL for Petitioners

MS VASUDATTA BHATT for Respondent No.1/1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/01/97

ORAL JUDGEMENT

1. Challenge is made by the petitioners to the order of the Gujarat Revenue Tribunal dated 3-1-1985 passed in Revision Application No.TEN.B.A. 781/80 under which the revision filed by the respondent herein has been accepted and the application filed by the respondent under sec.32PPP of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as the Act, 1948) was declared not maintainable.

2. The facts, in brief, of the case are that the respondent was cultivating land bearing survey No.989 admeasuring 5 acres and 1 gunthas situated in the sim of village Bhadran. The petitioner no.1 was at the relevant time, landlord of the suit land. The petitioners no.2 and 3 are the purchasers of the said land under registered sale deed dated 18-10-1976, the Banakhat in respect thereof was executed on 5-9-1965. In an inquiry under sec.32G of the Act, 1948, the respondent declined to purchase the said land. Thereafter the land was placed at the disposal of the Collector and the Collector under its order dated 12-2-1969 terminated the tenancy of the respondent and directed that the possession of the land be handed over to the petitioner no.1. In pursuance of the said order of the Collector, a panchkya was made in the presence of Talati and possession of the land in dispute was handed over on 21-4-1969 to the petitioner no.1. Necessary mutation entry was also effected in the revenue record evidencing the possession having been handed over to the petitioner no.1. The respondent filed an application purporting to be under sec.32PP and 32PPP of the Act, 1948. The Mamlatdar and A.L.T. Borsad, on appreciation of the evidence, produced by the parties on record, came to the conclusion that the application made by the respondent is not maintainable as the possession of the land in dispute was lawfully handed over to the petitioner no.1. Against the aforesaid order of the Mamlatdar and the A.L.T., Borsad, the respondent filed an appeal (Tenancy appeal) before the Deputy Collector at Kheda. The said appeal came to be dismissed by the appellate authority under its order dated 24-11-1979. The matter was taken up further by the respondent by filing a revision application before the Gujarat Revenue Tribunal at Ahmedabad which came to be accepted under the order dated 3-1-1985. Hence, this Special Civil Application.

3. Challenging the correctness of the order of the Gujarat Revenue Tribunal, Ahmedabad, the counsel for the petitioners contended that the Tribunal has exceeded its jurisdiction in interfering with the concurrent finding of fact of the two authorities below that the possession of the land was delivered to the petitioner no.1. Referring to sec.76 of the Act, 1948, the counsel for the petitioner contended that the Tribunal has a very limited power of interference in the matter while exercising its jurisdiction under the aforesaid provision. It has next been contended that otherwise also the order of Tribunal is not sustainable as it only considered the statement of one Daudbhai and other evidence that is of the Talati was

not considered who very categorically stated that the possession of the land has been delivered to the petitioner no.1. This is a serious procedural illegality committed by the Tribunal, and as such, the order deserves to be set aside.

4. On the other hand, the counsel for the respondent supported the order of the Tribunal.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Sec.76 of the Act, 1948, gives the power of revision to the Gujarat Revenue Tribunal, constituted under the Bombay Revenue Tribunal Act, 1957, against any order of the Collector on the following grounds namely, (1) that the order of the Collector was contrary to law, (2) that the Collector has failed to determine some material issue of law or (3) that there was a substantial defect in following the procedure provided by this Act or (4) that there has been failure to take evidence or error in appreciating important evidence, which has resulted in the miscarriage of justice. From reading of the said section, I do not find any substance in the contention of the counsel for the petitioners that no interference could have been made by the Tribunal in the concurrent finding of fact recorded by the two authorities.

6. Clause-C of subsection (1) of sec.76 of the Act, 1948 gives sufficient wide powers to the Tribunal of interference in its revisional jurisdiction where it finds any error in appreciation of the important evidence which has resulted in the miscarriage of justice. In the case in hand, the Tribunal has considered that the lower authorities have committed an error in appreciating the evidence of Daudbhai which has resulted in miscarriage of justice to the respondent. However, the matter would have been different where the other evidence would not have been on record of the case regarding delivering possession of the land to the petitioner no.1. at the appropriate time and secondly, in case Daudbhai would not have acted hostile to the petitioners. In this case Daudbhai was not the only person who has been examined. Other witness namely, Talati was there who has made a categorical statement that the possession of the land was delivered to the petitioner no.1. Both the authorities below after considering the evidence of Talati and after appreciating the evidence of Daudbhai have recorded a finding of fact that the possession of the land in dispute has been delivered to the petitioner no.1. The Tribunal in this case only referred to the evidence of Daudbhai and has not considered any other evidence. It

has also not considered an important fact that Daudbhai has acted hostile to the petitioners while entering into the realm of appreciating the evidence. Exercising power under Clause-C of subsection (1) of sec.76, the Tribunal has to consider all the evidence of both the parties on record and thereafter only it could have interfered with the order of the authorities below where it considers it to be a case of error in appreciation of the important evidence which has resulted in miscarriage of justice. In the present case, the Tribunal has not even cared to refer the other evidence except the evidence of one Daudbhai. It is a case where the way in which the Tribunal has proceeded in the matter resulted in the miscarriage of justice to the petitioners.

7. The net result of the aforesaid discussion is that there is an error apparent on the face of the order of the Tribunal, and as such, it cannot be allowed to stand.

8. In the result, this Special Civil Application succeeds and the same is allowed. The order of Gujarat Revenue Tribunal dated 03-01-1985 passed in Revision Application No.TEN.B.A. 781/80 is set aside and the matter is remanded back to the Tribunal with the direction to decide the revision application on merits, after hearing both the parties in accordance with law and the observations made in this judgment. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-